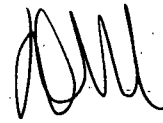


NO. 40922-4-II



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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

ELISA KOLLETTE PAISLEY, Respondent

v.

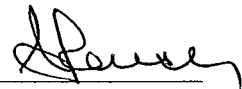
GREGG EDWIN PAISLEY, Appellant

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**APPELLANT'S REPLY BRIEF**

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Dated: November 4, 2011



Gregg Paisley, *pro se*  
17517 15<sup>th</sup> Avenue NE  
Shoreline, WA 98155  
(253) 709-1887

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## ARGUMENT

(Pertaining to Assignment of Errors 2.1:

Trial court ignored risk to children in deciding custody.)

Gregg made a number of assertions in his Opening Brief, notably that: **1.** Elisa has a severe, recurrent mental illness with a history of assaultive violence and a virtual certainty of multiple, similar relapses. **2.** On a daily basis her behavior demonstrates that problematic symptoms persist. **3.** She has made numerous, well-documented false statements to the Court, Dr. Schau, the GAL, and others and these false statements had a material effect on the outcome of the case.

Thus one would assume Elisa would in her Reply focus on refuting these assertions, especially the ones that undermine her credibility. So what is striking is her complete silence on the subject. In Gregg's view, a reasonable person would likely conclude from this silence that the numerous assertions made in his Opening Brief are true. And they are true, every word.

What Elisa offers instead is more subterfuge. Consider this stunningly absurd and dishonest statement from her Reply: "Mr. Paisley expected their 12 year old to provide care for all three children while they were ill." (RP 123 like 17 through page 124 line 22). If one goes to the record and reads the passage, it turns out this was a morning where Gregg had left the house early for court and Elisa was still

there with the kids. On every previous court date, Elisa had arranged for the kids to be looked after by one of her girlfriends for a brief period before the school bus came. She said nothing to Gregg to indicate that morning was different from any other morning. Elisa, not Gregg, was the only adult in the house and was in charge of the children that morning.

Then Elisa attempts to suggest she is unlikely to become violent again by quoting Gregg's expert witness, who says "it's very rare" for Bipolar I's to become a threat, to become violent. But that statement (*"It's very rare, most mentally ill patients are not violent."* RP at 416) is a complete red herring, not at all applicable to Elisa's condition. Yes, only a small percentage of Bipolar I's become violent or pose a threat to themselves or others. **But Elisa is already in that small percentage**, and has been since 2005: She has a documented history of assaultive violence, visited on numerous persons, and has been involuntarily committed for posing a "grave danger to others" as specified in the commitment papers. To paraphrase her own expert: Future behaviors are usually a repeat of past behaviors.

Then Elisa mentions Movie Night in an attempt to cast a negative light on Gregg's behavior, temperament, judgment, and motives. But she knows that Gregg came up with the idea for Movie Night to solve a problem she wanted solved: One day, years ago, Elisa told Gregg she was worried that their oldest

boy, Will, was by himself a lot at recess, seemingly not making friends. She was concerned he was not being well-socialized, was lonely, and felt left out.

Gregg said he would do something about it and within a day or two came up with the idea to invite kids over for an evening of movies and snacks (brownies that Will and Gregg baked, ala mode), sort of like a teenage party but for little kids. Gregg printed up colorful little tickets for the kids to hand out at school, and moreover told them they must invite everyone in their class so no child felt left out, just like the rule for Valentine's Day: bring enough for every kid. Movie Night quickly became a wildly popular event and, sure, sometimes the crowds were big. But contrary to Elisa's assertions, no one ever got hurt, other than a minor scratch or bang-up now and then. And Will (and Tainn and Chenoa, who also invited their friends) quickly became among the most popular kids in school, and still are to this day. And they learned to treat everyone as equals. The good it did for all the kids, especially ours, was enormous. The bad was negligible -- but sadly true to form, the bad is what Elisa has tried in legal papers to make hay with. As recently as last week the Tainn said: "Dad, kids still ask if we are going to have Movie Nights again?"

Unfortunately, and completely opposite of the Elisa of just a few years ago before her illness, there seems to be no boundaries of decency or limits to her hypocrisy when she is trying to bring people to her side and get her way. She writes "...that (to Gregg) the oldest son's suicide threat is not concerning enough for

counseling...” But as noted in Gregg’s Opening Brief, the suicide claim was something she used to manipulate Dr. Schau and never mentioned it to Gregg. When Gregg called Will’s therapist / counselor in a panic after reading about it in Dr. Schau’s report, the therapist (Dr. Wyma) had never heard such a thing from Will or Elisa, leaving one to the inescapable conclusion that she made it all up. Otherwise, she certainly would have mentioned it to Dr. Wyma. I mean, seriously, if your child was talking suicide, wouldn’t you tell the child’s therapist?

Now in retrospect, one can also easily see that numerous claims Elisa made in court papers to make her case was just posturing for the trial court. For example, she claimed she is in charge of the children’s “spiritual and religious” needs and takes them regularly to church and keeps them in touch with their Indian roots. She claimed she needed more money from Gregg so she should retrain and re-enter the workplace.

But today, it can be said that Elisa almost never takes the children to church -- she stopped shortly after the trial court decision. And it is Gregg who takes the kids to their Montana Blackfeet Reservation (Gregg is Blackfeet), while they have never been to their SW Navajo Reservation (Elisa is Navajo). For example, Chenoa (age 9) drove with Gregg the day after Christmas 2010 to Montana to help with one of his projects: The Blackfeet Children’s Christmas Fund party where 2,000 presents were handed out to 1,000 mostly-poor Indian kids, jammed into Gregg’s building. Since dad was in charge she got what she wanted most: to

stand on the stage in front of the huge, excited, edge-of-your-seat crowd and draw the numbers for the big drawing for 40 bikes and other big items. It was the most fun ever, for kids and grown-ups alike, on a very rough and downtrodden reservation. And Chenoa was front and center for it all. She understood she wasn't going to get presents for herself there —they were only for the needy— but she had the time of her life, and this year her brothers are talking about going to help too. Our kids are learning it is better to give than to get, and that every child everywhere, especially those in grinding poverty and unstable, unsafe homes, deserve love, happiness, and to be protected. Show me a place where that lesson hits harder than on a large, remote, Northern Plains Indian reservation. I make sure Will, Tainn, and Chenoa see close up and personal why the fortunate must take care of the unfortunate.

**Elisa has burned through her maintenance at nearly twice the scheduled**

**rate.** She has unfettered access to Gregg's bank account and credit / debit cards and has taken so much money so fast, that as of October 21, 2011 Gregg has not only paid off the required \$80,000 months ahead of schedule but has overpaid by well over \$50,000. Specifically, instead of the required \$5,862 a month (child support + maintenance), Elisa has been taking an average of somewhere between \$8,700 and \$10,100. And it appears to Gregg that Elisa has not been using any of this money to look for or prepare for gainful employment. But at the same time she somehow has enough money for new furnishings upstairs and down, inside and out. She just put in a large new stone patio, and has enough time to

spend a lot of leisure time entertaining or relaxing at the lake. But when the kids want something that costs more than a few dollars, Gregg's phone rings. In the meantime, Elisa's overspending has caused serious negative cash flow for Gregg. However, none of this is a matter for the Court of Appeals because Gregg did not contest maintenance or child support. But the parties will very likely be back in Superior Court early next year to resolve some issues.

In any case, the point here is not to criticize her spending habits or suggest Elisa is all about Elisa. Rather, it is to point out that in Gregg's view, Elisa has almost no sense of cause and effect and seemingly doesn't plan ahead like most responsible people do. Money to her seems like an abstraction, and she seems to assume that if she writes a check, someone else will cover it --which has been true for several years (but is now coming to an end, and then what?). These are common, well known symptoms of Bipolars I in incomplete remission: impulsive behaviors, an irresponsible lack of planning and management of their affairs, wild overspending, unrealistic assumptions, focusing on the wrong things, and chronic occupational difficulties.

When Gregg pointed out last week how far ahead he has paid and reminded her that his income was about to take a precipitous drop for at least the next few months so a cash crunch was looming, all of this seemed to come as a surprise to her, but didn't seem to faze her much. But fazed or not, the question is: Now that



we are at the end of the short-term, how is Elisa going to support herself in the mid- and long-term, let alone help support the kids?

Gregg's main concern with this sort of inter-episodic, incomplete remission behavior is what it is doing to the kids. How do they learn personal and financial responsibility, a good work ethic, managing everyday affairs, common sense, and rational, productive priorities exposed to this sort of behavior? And why in the last year and a half are the kids sick so much and missing so much school? Tainn has Crohn's and something is aggravating it. Will has serious, ongoing digestive problems and something is aggravating it too. Only Chenoa seems to have escaped digestive problems, and overall seems the healthiest of the lot.

On the subject of Chenoa, Elisa has tried her hardest, including in her recent Reply, to suggest that Gregg treats her as his favorite and to allude to "inappropriate behavior." Elisa knows perfectly well there is nothing inappropriate and she should be ashamed to stoop so low, but she disingenuously brought it up again in her Reply. So it is just as well to clarify this nonsense now for the Court. The back story is that, when Elisa told the kids she wanted a divorce, they were devastated, especially Chenoa. Chenoa started crawling in bed with Gregg for stories at night, obviously because she was scared and worried about the divorce. She remembered that when she was a baby Gregg used to tell her brothers and her never ending fantasy stories every night (during that period all the kids slept with Gregg because Elisa was recovering and slept a lot on an

unpredictable schedule elsewhere in the house). She asked dad if he could start doing the “magic box” again (so-called because the stories involve pulling a surprise stuffed animal out of a box at the right moment in the story). Gregg thinks the stories were mainly an excuse to be with a parent since she was so scared. Elisa wouldn’t sleep with her, so she would come and find her dad. Also, when Gregg and Chenoa are at the farm, it is a vast, dark, spooky place (coyotes howling, etc.) so she won’t sleep alone. Same story on the reservation: unless she has friends staying over, she wants her cot right next to dad’s.

*(Pertaining to Assignment of Errors 2.2: Psychiatric report was based on false information and should have been nullified.)*

As noted in Gregg’s Opening Brief, a key assertion is that the psychological reports produced by Dr. Edward Schau (which Gregg believes had a material effect on the trial court’s decisions) were wildly defective due to unethical and unprofessional behavior, based largely on false statements (later recanted under oath) made to him by the Respondent, and should be disregarded and quashed. The licensing agency, The Washington State Department of Health, conducted an investigation last year and found sufficient merit to the complaint to forward it to the DOH legal department for further action. According to public disciplinary records of similar cases, conduct and malpractice of this sort has resulted in severe penalties and opened the door to significant civil awards. So it was Gregg’s hope that the DOH lawyer (Mr. Michael Weisman, esq. DOH staff

attorney) and the various boards which review such things would complete their work in time to bolster the arguments herein by including their findings. But as of today Gregg has heard nothing from the DOH.

Another key part of Gregg's argument concerns problems with the GAL report, for example the GAL's inexplicable failure to discover or report on the Respondents well-documented history of violence, despite the GAL being directed in writing to the documents. Gregg filed a GAL grievance but the Court wrote back to say they could not compel the GAL to respond because she was no longer a GAL in Pierce County. However, they said they could compel her if she sought to return to the registry. So Gregg's hope was she would return to the registry, make a response, and the GAL Review Board would issue findings to include herein. But as of today, nothing further has been heard from the Court.

*(Pertaining to Assignment of Errors 2.3: Court erred  
in awarding Lake Forest Park house to the wife.)*

The Lake Forest Park property was clearly Gregg's long-time separate property at the time of marriage and it never used any community funds to service the debt. The only thing that occurred was that a mortgage was taken out to lower the payments. That is not sufficient to convert separate to community property:

*“...The joinder of a husband and wife in a mortgage of real state is not evidence that the property was community property...”* Guye v. Guy, 63 Wash. 340, 115. 731

Elisa suggests that the quit claim deed was intended to make the property community. “Intent” is the operative word here, and **the intent is clear: It was solely to satisfy a sudden, unforeseen bank request.** What happened was that Gregg and Elisa applied for the refinance and it was all looking fine, but at the last moment the bank threw a curve ball, as they often do. They said, essentially: “Due to banking policies this loan will be easier to write if we do it on Elisa’s W2 (Gregg was self-employed, i.e. 1099s) and to accommodate that, will Gregg sign a quit claim deed?” Gregg said, “Sure, why not?”

Thus the signing of the quit claim deed was solely to facilitate the loan. It served no other purpose: 100% of the refinance proceeds went to pay the older mortgage (e.g. no cash was taken out), 100% of the property’s debt and expenses was serviced by Gregg’s separate income as it had always been from the rental income from LFP. If there was ever a shortfall, that shortfall was always covered by the substantial surplus separate income from a Shoreline building (see Exhibit 4 *Separate Property Income / Outgo*, Opening Brief). Elisa never lifted a finger or paid a penny in respect to the LFP property. In fact, she probably only saw it once or twice for years thereafter.

Also it is not true that she “solely” took on the debt. Washington is a community property state, so Gregg still had the liability. Elisa’s position was more akin to a co-signer or other guarantor: If Gregg had been run over by a bus, the equity on the property would more than pay off the loan. Thus there was never any risk to Elisa in signing the loan papers.

The Court will note that **the quit claim deed was signed as part of the loan paper package.** That clearly demonstrates intent and purpose. There was otherwise no intent whatsoever to make it community property. Elisa knows this, which probably explains why she resorts to making up false statements such as: “He enticed his wife to sign solely for the loan stating there was sufficient value and they both would realize the appreciation.” and “she was reluctant to do so without sharing appreciation for the property.” This is all made up stuff: If Gregg had ever said any such thing, wouldn’t he at least have been asked about it in the lengthy depositions or on the stand? It never came up because it never happened.

And this all sounds remarkably like how Elisa claimed to the Court that she was “coerced” to sign loan papers in the HELOC transaction, only to later have it proven that it was she who arranged the loan with a friend of hers. Gregg thinks it is fair to say Elisa’s credibility on these matters is not very good. On the other hand, Gregg believes the Court now has ample evidence to show he is above

board and responsible on all matters pertaining to finances and agreements to the point of routinely paying bills not his own, without question or apparent recourse.

The court will also note that Elisa and the trial court never suggested or engaged in any sort of Moore Marsden analysis, which suggests they recognize that community funds were never used to service LFP. Instead they make the absurd leap that, simply by refinancing and signing bank required papers (including the quit claim), the LFP is suddenly half-owned by Elisa. This, despite no contribution of assets or labor and no actual debt burden or risk (again, property was always worth more than the loan, should Gregg get hit by a bus).

Gregg on the other hand never did any sort of analysis because it never occurred to him that Elisa would try to wrestle the LFP house from him. But in fact it isn't Gregg she wrestled it from, it is her own children: Gregg has said from day one, and through numerous legal filings and testimony, that he wanted LFP and other properties put on the children's names.

*(Pertaining to Assignment of Errors 2.4: Court erred in  
mis-assigning and allowing excessive attorney's fees*

On the matter of attorney fees, Gregg's main argument is that he was deprived of an opportunity to argue his case by what he perceived as an impatient judge. All of the key arguments were ready and in the filings, for example:

- *Opposing counsel inexplicably raised her hourly rate from the retainer agreement.*
- *Unnecessary costs were run up with costly depositions that ran right up to the legal maximum for hours / days, despite Gregg's written request for interrogatories instead. In the end virtually none of these depositions bore fruit for Elisa—it was just a big, expensive fishing expedition—and virtually none of the depositions made its way to trial.*
- *The trial court ordered in writing that Gregg and Elisa repay their parents any money borrowed. But at time of decision Elisa's legal fees had already been largely paid by her parents. Last week Elisa told Gregg that, if the Court ultimately decides Gregg does owe attorney fees, he should pay her since (presumably) her attorney has already been paid. This came up when Gregg mentioned how he had overpaid by more than \$50,000 and provided detailed spreadsheets, which she has to date not found fault with.*

- *Elisa made expensive frivolous motions, including dragging the parties into court the day before Thanksgiving, despite mutual assurances that neither party would disrupt the children's holidays with court dates.*
- *Elisa organized a parade of witnesses during trial that did nothing but repeat what they had already said in their affidavits, thus running up huge costs.*
- *Gregg's request for a reduction of fees was largely based on an analysis by his attorney (who is obviously qualified to review the reasonableness of fees, whereas Gregg is not) going line by line through Ms. Fiori's billings and comparing it to typical hours for common tasks.*

But the trial judge wouldn't hear any of these arguments. She instead simply handed Gregg the entire bill while at the same time awarding all cash to Elisa, leaving Gregg with nothing to pay the bill with.

The Court of Appeals will note also that the oft-repeated claim that Gregg makes \$21,000 is again repeated here. It is not true, or even close to true, and Elisa knows it. But again, for Gregg this case has always been about the safety and well being of the children so he did not appeal on finances. All that is better handled in Superior Court in 2012 anyway.



## CONCLUSION

*(This section is unchanged from the Opening Brief and is reproduced here for reference)*

Gregg respectfully asks the Court of Appeals to:

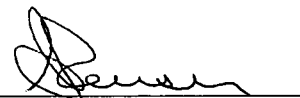
1. Order joint residential placement (50 / 50, alternating weekly) year 'round for all children if that is permissible by law since Elisa has in the past refused to agree to this arrangement. Gregg still thinks that the parents rotating through the Lake Tapps home weekly is the safest scenario with the least disruption to the children. But if it is too complicated or onerous from the standpoint of revising the division of assets or is unallowable by law, then Gregg will within 90 days secure a suitable house in the neighborhood so the children can stay in their respective schools. In the meanwhile, Gregg asks to see the children and meet with Elisa two times a week to make sure she is in good health. Also as Gregg requested throughout the record and trial and can be facilitated by RCW 26.09.191, an adult of Elisa's choosing, with some knowledge of the situation (this could be a friend or housekeeper paid for by Gregg) should be arranged to look in on Elisa every two or three days when she has the children to make sure everything is OK.
2. Or order primary residential placement of all children with Gregg at either the Lake Tapps house or in a new residence in the neighborhood, and he will ensure they get 50% time with their mother anyway, except at times when her illness flares up. All other requests made in #1 above apply.
3. No change in parental decision making is requested. However, due to the history of denial and combativeness when Elisa is escalating into a bipolar episode, Gregg requests a court order granting him sole decision-making authority at times when an independent

agent (for example, a GAL, police officer, medical personnel, CPS) observes problematic symptoms associated with bipolar I.

4. Order that both psychological reports be deemed invalid and expunged from the record.
5. Find that the Lake Forest Park House was improperly deemed community property and send it back to Superior Court to revise the division of assets and to have the house placed in trust for the three children. Gregg agrees to continue servicing the debt on the property and maintain it until they reach majority. Gregg is also willing at this time to have the Shelton farm be placed in trust for the three children under the same conditions. This is in hopes that Elisa will eventually do the same for the Lake Tapps home and then let the children choose or draw lots for which child gets which property when they are older. If not Gregg will eventually secure a third house to make things equitable.
6. Order Superior Court to review Gregg's request for a reduction of fees and revisit the liability for said fees in view of the fact that all cash and was given to Elisa.

Dated: 11-4-2011

Respectfully submitted: \_\_\_\_\_



Gregg Paisley, *pro se*

17517 15<sup>th</sup> Ave NE

Shoreline, WA 98155

253-709-1887